

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
COUNTY OF MARION) SS:
CAUSE NO.

49D02 08 07 PL 029256

STATE OF INDIANA,)

Plaintiff,)

v.)

BRIAN S. HESSLER, individually)
and doing business as)
GREAT BUSINESS)
OPPORTUNITIES, LLC,)

Defendant.)

FILED

(251) JUL 01 2008

Elizabeth L. White
CLERK OF THE MARION CIRCUIT COURT

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Amber Degenhart, petitions the Court pursuant to the Indiana Business Opportunity Transactions Act, Ind. Code § 24-5-8-1 *et seq.*, and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*; for injunctive relief, restitution, civil penalties, investigative costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5.0.5-4(c).
2. The Defendant, Brian S. Hessler, individually and doing business as Great Business Opportunities, LLC, is an individual engaged in the sale of business opportunities which includes selling travel packages, setting up websites, and providing advertising to consumers from his principle place of business, located at 1833 East Baseline Road Suite 180, Gilbert, AZ, 85234.
3. When, in this Complaint, reference is made to any act of the Defendant, such allegations shall be deemed to mean the principals, agents, representatives, or employees of the Defendant did or authorized such acts to be done while actively engaged in the management,

direction, or control of the affairs of Defendant and while acting within the scope of their duties, employment, or agency for the benefit of the Defendant.

FACTS

4. Since at least November 7, 2006, the Defendant has engaged in sale of business opportunities to the general public, including Indiana residents.

5. The Defendant, Brian Hessler, by and through Great Business Opportunities, LLC, entered into contracts for the sale of a business opportunity with Rick Hayworth of Fowler, IN, who paid a total of Five Thousand One Hundred and Forty-Nine Dollars (\$5,149.00) to the Defendant between November and December of 2006.

6. On or around November 6, 2006, after viewing Defendant's informercials, Mr. Hayworth entered into a contract with the Defendant to set up a travel website on his behalf, paying One Hundred Sixty-Nine Dollars (\$169.00). Mr. Hayworth was to receive revenue through commission-based advertising on the website.

7. Defendant's first invoice to Mr. Hayworth (attached as Exhibit A), failed to include the following information:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
- b. a detailed description of any services that Defendant undertakes to perform for the investor;
- c. a detailed description of any training that Defendant undertakes to provide to the investor;
- d. the approximate delivery date of any goods Defendant is to deliver to the investor; and
- e. a statement of the investor's thirty (30) day right to cancel the contract.

8. On or around December 12, 2006, Mr. Hayworth was told by the Defendant that he would need to upgrade to a Level II package if he wanted a higher return on his investment. Mr. Hayworth then proceeded to enter into a second agreement with the Defendant and made a second investment of Two Thousand Five Hundred Dollars (\$2,500.00). A copy of this invoice is attached as Exhibit 'B'.

9. Defendant's second invoice to Hayworth failed to include the following information:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
- b. a detailed description of any services that Defendant undertakes to perform for the investor;
- c. a detailed description of any training that Defendant undertakes to provide to the investor;
- d. the approximate delivery date of any goods Defendant is to deliver to the investor; and
- e. a statement of the investor's thirty (30) day right to cancel the contract.

10. In addition to the Level II package detailed in paragraph 8, Mr. Hayworth also invested an additional Two Thousand Five Hundred Dollars (\$2,500.00) for advertising his website business. A copy of this invoice is attached as Exhibit 'C'.

11. Defendant's third invoice to Hayworth failed to include the following information:

- a. the name and business address of Defendant's agent in Indiana authorized to receive service of process;
- b. a detailed description of any services that Defendant undertakes to perform for the investor;

- c. a detailed description of any training that Defendant undertakes to provide to the investor;
- d. the approximate delivery date of any goods Defendant is to deliver to the investor; and
- e. a statement of the investor's thirty (30) day right to cancel the contract.

12. After making a minimal return on his investment (Five Hundred Dollars (\$500.00) over the course of six months), Mr. Hayworth filed a complaint with the Indiana Attorney General's Office, Consumer Protection Division, on June 22, 2007.

13. In his response to this consumer complaint, the Defendant filled out a questionnaire (attached as Exhibit 'D') which is used by the Office of the Attorney General to determine whether businesses are engaging in the sale of business opportunities, and voluntarily sent it to the Consumer Protection Division on August 21, 2007.

14. With this response and questionnaire, the Defendant both admitted to selling business opportunities within the State of Indiana and refused to refund Mr. Hayworth his investments.

15. The Defendant's admission of selling travel sales packages to investors and representing a market exists for any goods to be made or services to be rendered by the investor is a "business opportunity" as defined by Ind. Code § 24-5-8-1.

COUNT I - VIOLATIONS OF THE BUSINESS OPPORTUNITY TRANSACTION ACT

16. The Defendant failed to provide Indiana investors, including but not limited to Mr. Hayworth, with the disclosures required by Indiana law at least seventy-two (72) hours before the earlier of the investors' execution of a business opportunity contract with the Defendant or receipt of any consideration by the Defendant, in violation of Ind. Code § 24-5-8-2.

17. The Defendant failed to obtain a surety bond in favor of the State of Indiana prior to making any representations to Indiana investors, in violation of Ind. Code § 24-5-8-3.

18. The Defendant failed to file a copy of the disclosure statement and surety bond and pay the filing fee required by Indiana law with the Consumer Protection Division of the Office of the Attorney General prior to advertising or making any representation to any Indiana investor in regards to the business opportunity, in violation of Ind. Code § 24-5-8-4.

19. The Defendant's failure to provide contracts containing the information detailed in paragraphs 7, 9, & 11 above is in violation of Ind. Code § 24-5-8-6(b).

20. Defendant's act of requiring Hayworth to make initial cash payments exceeding twenty percent (20%) of the initial payments, as referred to in paragraphs 6, 8, & 10, violates Ind. Code § 24-5-8-11 in that those payments exceeded twenty percent (20%) of the initial payment and, to the best of Plaintiff's knowledge and belief, the funds in excess of the twenty percent (20%) amount were not placed in an escrow account in accordance with Ind. Code § 24-5-8-12.

21. Due to the foregoing violations of Ind. Code 24-5-8-2, Indiana investors, including Mr. Hayworth, have a statutory right to cancel their business opportunity contracts with the Defendant in accordance with Ind. Code § 24-5-8-15.

COUNT II - VIOLATIONS OF THE INDIANA DECEPTIVE CONSUMER SALES ACT

22. The State of Indiana realleges and incorporates by reference the allegations contained in paragraphs 1 through 21 above.

23. In accordance with Ind. Code § 24-5-8-20, the Defendant's violations of Indiana's Business Opportunity Transactions Act, Ind. Code 24-5-8-1 *et seq.* are violations of Indiana's Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, and subject to its penalties and remedies.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court to enter a judgment against the Defendant and order the following relief:

- a. A permanent injunction pursuant to Ind. Code § 24-5-8-18 and Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant, its agents, representatives, employees, successors, and assigns from engaging in conduct in violation of Ind. Code § 24-5-8-1 *et seq.*, or Ind. Code § 24-5-0.5-1 *et seq.*;
- b. Avoidance, or in the alternative, cancellation of the Defendant's business opportunity contracts with Indiana investors, including but not limited to Rick Hayworth, pursuant to Ind. Code § 24-5-8-15 and Ind. Code § 24-5-0.5-4(d);
- c. Restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2) and (d), in the amount of all consideration paid to the Defendant by Indiana investors, including but not limited to Four Thousand Six Hundred and Sixty-Nine Dollars (\$4,669.00) on behalf of Rick Hayworth.
- d. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- e. Civil penalties pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's incurable deceptive acts, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- e. All other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Atty. No. 4150-64

By:



Amber Degenhart
Deputy Attorney General
Atty. No. 27079-49

Office of the Attorney General
Indiana Government Center South, 5th floor
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Indianapolis, IN 46204
(317) 234-2623


GREAT BUSINESS OPPORTUNITIES PRODUCT INVOICE – RICK HAYWORTH

<u>Product Purchased</u>	<u>Quantity</u>	(U.S. Dollars) <u>Amount</u>
Website	1	\$149.00

Domain Name selected: www.hayworthtrippingout.com

Please make sure that **all** of the information on this invoice is correct. Make sure that the invoice and the domain name are correct.

Signed this 9 day of Nov, 2006.


Rick Hayworth



CHECKING AUTHORIZATION FORM

I, Rick Hayworth, authorize Great Business Opportunities to draft a check on my checking account for the amount of \$149.00 in United States funds. I understand and agree this is a final non-disputable transaction.

Description of transaction: *Coastal Vacations Website*

Price:	\$ 149.00
Shipping + Handling:	\$
Tax:	\$
Total:	\$ 149.00

Checking Account Information:

Name of Bank: ~~XXXXXXXXXXXX~~
City/State of Bank: Otterbein, IN
Routing Number: ~~XXXXXXXXXX~~
Account Number: ~~XXXXXXXXXX~~
Check Number: ~~XXXX~~

Checking Account Address: 904 E. 6th Street
Fowler, IN 47944

Driver's License Number: 8936478434
Driver's License Issuance State: Indiana

X *Rick Hayworth*
Authorized Signer

Date: 11-9-06

Print Name: *rick hayworth*

GREAT BUSINESS OPPORTUNITIES PRODUCT INVOICE – RICK HAYWORTH

<u>Product Purchased</u>	<u>Quantity</u>	(U.S. Dollars) <u>Amount</u>
Coastal Vacations Level II Pkg.	1	\$2,500.00

Please make sure that all of the information on this invoice is correct. Make sure that the invoice is correct.

You also hereby acknowledge that you have received your Coastal Vacations Level Two Package.

Signed this 22 day of DEC, 2006.

Rick Hayworth
Rick Hayworth

**GREAT BUSINESS OPPORTUNITIES
INFOMERCIAL ADVERTISING INVOICE –
RICK HAYWORTH**

<u>Product Purchased</u>	<u>Quantity</u>	(U.S. Dollars) <u>Amount</u>
Infomercial Advertising Rights	1	\$ 2,500.00

I, Rick Hayworth, hereby do agree that Great Business Opportunities cannot guarantee results from television advertising. Two local infomercials are included at no additional cost. Afterwards, Rick Hayworth will pay for any additional air time for his television advertising.

In addition, you hereby acknowledge that the advertising invoice is correct as indicated above.

Signed this 22 day of DEC, 2006.

Rick Hayworth
Rick Hayworth



- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| a. the investor may or will earn an amount in excess of the initial payment as a result of the investment; <u>OR</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. a market exists for any goods to be made or services to be rendered by the investor; <u>OR</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| c. the Seller may buy from the investor any goods to be made or services to be rendered by the investor; <u>OR</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d. the Seller or a person referred by the Seller to the investor may or will sell, lease, or distribute the goods made or services rendered by the investor; <u>OR</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e. the Seller may or will pay to the investor the difference between the initial payment and the investor's earnings from the investment? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Information To Determine If Exemption Applies

1. Is the Seller offering to sell a Franchise, as defined in IC 23-2-2.5-1?

- | | | |
|--|--------------------------|-------------------------------------|
| a. Is the investor granted the right to engage in the business of dispensing goods or services, under a marketing plan or system prescribed in substantial part by the Seller; <u>AND</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Is the operation of the investor's business pursuant to such a plan substantially associated with the Seller's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the seller or its affiliate; <u>AND</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c. Is the investor required to pay a franchise or license fee? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If you answered 1 a, b, and c in the affirmative, contact the Indiana Secretary of State, Franchises Division. You may need to register with that agency instead of the Attorney General's Office.

2. Is the Seller offering to sell any assets (other than inventory) of the Seller's own ongoing business? ☐ ☒

3. Is the Seller offering to sell, not-for-profit, demonstration ☐ ☒

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| equipment, materials, or samples for a total price of \$500 or less? | | |
| 4. Is the Seller offering to sell all or substantially all of the assets of an ongoing business? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Are you a substantial seller? | | |
| a. On a consolidated basis, according to current financial statements certified by an independent certified public accountant, is your business's net worth at least five million dollars (\$5,000,000)? <u>OR</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. If not, is your business's net worth at least one million dollars (\$1,000,000)? <u>AND</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c. Is your business at least eighty percent (80%) owned by a corporation that currently has a net worth, on a consolidated basis, of five million dollars (\$5,000,000)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

I HAVE ATTACHED A COPY OF ALL BROCHURES, LITERATURE, CONTRACTS AND OTHER PAPER MATERIALS RELEVANT TO THIS BUSINESS OPPORTUNITY.

Seller's Signature Brian S. Kula Date 8/21/07

(see File No. 07-CP-57888 response from Great Business Opportunities for a copy of all aforementioned paperwork relevant to business opportunity.

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